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8 **UNITED STATES DISTRICT COURT**  
9 **EASTERN DISTRICT OF CALIFORNIA**  
10

11 UNITED STATES OF AMERICA,  
12 Plaintiff,

13  
14 v.

15  
16 RICARDO GUERRERO,  
17 Defendant.  
18  
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Case No: 1:21-cr-00240 JLT/SKO

**STIPULATION TO CONTINUE AUGUST 31,  
2022 STATUS CONFERENCE TO NOVEMBER  
2, 2022; ORDER**

Ctrm: 8

Hon. Sheila K. Oberto

20 This case is set for a status conference on Wednesday, August 31, 2022. Dkt. 19. On May 13,  
21 2020, this Court issued General Order 618, which suspended all jury trials in the Eastern District of  
22 California “until further notice.” Under General Order 618, a judge “may exercise his or her authority to  
23 continue matters, excluding time under the Speedy Trial Act with reference to the court’s prior General  
24 Order 611 issued on March 17, 2020, . . . with additional findings to support the exclusion in the Judge’s  
25 discretion.” General Order 618, ¶ 6 (E.D. Cal. May 13, 2020). In addition, any judge “may order case-  
26 by-case exceptions” to General Order 618’s provisions “at the discretion of that Judge or upon the  
27 request of counsel, after consultation with counsel and the Clerk of the Court to the extent such an order  
28

will impact court staff and operations.” General Order 618, ¶ 7 (E.D. Cal. May 13, 2020). This and previous General Orders were entered to address public health concerns related to COVID-19.

On May 26, 2021, and in part “given the progress in vaccination programs and the resulting lowering of risk to public health as evidenced by reductions in rates of infection, hospitalization and death due to COVID-19”, this Court issued General Order 631. Within General Order 631, this Court: (1) reopened the court to the public, (2) gave each judge the authority to “determine whether to hold proceedings over which that Judge presides in person in a courtroom or by telephone or videoconference” and (3) if “any Judge [elects to conduct] any criminal proceeding by telephone or video conference . . . [the Court] continues to authorize the use of telephone or video conference with a defendant’s consent.” General Order 631, ¶¶ 1, 4 and 5. (E.D. Cal. May 26, 2021). The court’s above protocols were recently extended through September 25, 2022. General Order 652 (E.D. Cal. June 27, 2022).

Although the General Orders address the district-wide health concern, the Supreme Court has emphasized that the Speedy Trial Act’s end-of-justice provision “counteract[s] substantive openendedness with procedural strictness,” “demand[ing] on-the-record findings” in a particular case. *Zedner v. United States*, 547 U.S. 489, 509 (2006). “[W]ithout on-the-record findings, there can be no exclusion under” § 3161(h)(7)(A). *Id.* at 507. Moreover, any such failure cannot be harmless. *Id.* at 509; *see also United States v. Ramirez-Cortez*, 213 F.3d 1149, 1153 (9th Cir. 2000) (explaining that a judge ordering an ends-of-justice continuance must set forth explicit findings on the record “either orally or in writing”).

Based on the plain text of the Speedy Trial Act—which *Zedner* emphasizes as both mandatory and inexcusable—General Orders 611, 612, 617, and 618 require specific supplementation. Ends-of-justice continuances are excludable only if “the judge granted such continuance on the basis of his findings that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial.” 18 U.S.C. § 3161(h)(7)(A). Moreover, no such period is excludable unless “the court sets forth, in the record of the case, either orally or in writing, its reason or finding that the ends of justice served by the granting of such continuance outweigh the best interests of the public

1 and the defendant in a speedy trial.” *Id.*

2       The General Orders exclude delay in the “ends of justice.” 18 U.S.C. § 3161(h)(7) (Local Code  
3 T4). Although the Speedy Trial Act does not directly address continuances stemming from pandemics,  
4 natural disasters, or other emergencies, this Court has discretion to order a continuance in such  
5 circumstances. For example, the Ninth Circuit affirmed a two-week ends-of-justice continuance  
6 following Mt. St. Helens’ eruption. *Furlow v. United States*, 644 F.2d 764 (9th Cir. 1981). The court  
7 recognized that the eruption created “appreciable difficulty” for the trial to proceed. *Id.* at 767-69; *see*  
8 *also United States v. Correa*, 182 F. Supp. 326, 329 (S.D.N.Y. 2001) (citing *Furlow* to exclude time  
9 following the September 11, 2001, terrorist attacks and the resultant public emergency).

10       The coronavirus is posing a similar, albeit much more enduring, “appreciable difficulty” to the  
11 prompt proceedings mandated by the statutory rules. Recently, the Ninth Circuit enumerated a “non-  
12 exhaustive” list of seven factors it found to be “relevant” in considering ends-of-justice Speedy Trial Act  
13 continuances “in the context of the COVID-19 pandemic.” *United States v. Olsen*, --- F.3d ---, 2021 WL  
14 1589359 at \*7 (9<sup>th</sup> Cir. Apr. 23, 2021). That non-exhaustive list includes: (1) whether a defendant is  
15 detained pending trial; (2) how long a defendant has been detained; (3) whether a defendant has invoked  
16 speedy trial rights since the case’s inception; (4) whether a defendant, if detained, belongs to a  
17 population that is particularly susceptible to complications if infected with the virus; (5) the seriousness  
18 of the charges defendant faces, and in particular whether the defendant is accused of violent crimes; (6)  
19 whether there is a reasons to suspect recidivism if the charges against the defendant are dismissed; and  
20 (7) whether the district court has the ability to safely conduct a trial. *Id.*

21       In light of the foregoing, this Court should consider the following case-specific facts in finding  
22 excludable delay appropriate in this particular case under the ends-of-justice exception, § 3161(h)(7)  
23 (Local Code T4). If continued, this Court should designate a new date for this matter’s next status  
24 conference. *United States v. Lewis*, 611 F.3d 1172, 1176 (9th Cir. 2010) (noting any pretrial  
25 continuance must be “specifically limited in time”).

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STIPULATION

THE PARTIES HEREBY STIPULATE, through their respective attorneys of record, Assistant United States Attorney Brian W. Enos, counsel for the government, and Scott A. Tibbedeaux, counsel for defendant Ricardo Guerrero (“defendant”), that this action’s **Wednesday, August 31, 2022, status conference be continued to Wednesday, November 2, 2022, at 1:00 p.m.** The parties likewise ask the court to endorse this stipulation by way of formal order.

The parties base this stipulation on good cause. Specifically,

1. The grand jury returned an indictment regarding this matter on October 7, 2021. Dkt. 1. Soon thereafter, the parties agreed to and presented to the court a stipulation and proposed protective order regarding the production of confidential information regarding third parties without redactions (Dkt. 6), which the court endorsed by way of formal order on November 19, 2021. Dkt. 8. The government then prepared and delivered an initial set of discovery to defense counsel afterwards, and within the time limits set forth by Eastern District (Cal.) Local Rule 16-440. The defense counsel continues its review of this rather voluminous discovery.
2. Counsel for the government prepared a written plea offer to the defense. The government anticipates that it should have this offer internally approved and delivered to the defense this week. As noted in the parties’ last stipulation, the government anticipated delivering the plea offer to defense counsel several weeks ago. Since that time, however, previously unanticipated reactive cases surfaced on the government attorney’s caseload which delayed delivery.
3. This case involves voluminous electronic evidence that includes depictions of minors engaged in sexually explicit conduct. Upon defense counsel’s request, counsel for the government will work with HSI’s Fresno office and the defense to arrange for the defense’s review of electronic evidence in this case in accord with relevant provisions of Section 3509 of the Adam Walsh Act.
4. From this point forward, counsel for the government continues to work toward determining

1 the extent supplemental discovery exists and needs to be produced in accord with Rule 16.

2 As the defense completes its review of the discovery in this case, the parties will further their  
3 engagement of meaningful discussions regarding its potential resolution. The parties  
4 anticipate that they will be able to advise the court about the extent this matter can be  
5 resolved short of trial at the continued status conference.

6 5. After analyzing respective calendars including pending trial dates, the parties confirm that  
7 they are both available to appear at the court's November 2, 2022 status conference calendar.  
8 The parties further anticipate that they will be able to advise the court of the extent this  
9 matter can be resolved, or whether a trial date should be set.

10 6. The parties therefore stipulate that the period of time from August 31, 2022, through  
11 November 2, 2022, is deemed excludable pursuant to 18 U.S.C. §§ 3161(h)(7)(A) and  
12 3161(h)(7)(B)(i) and (iv) because it results from a continuance granted by the Court at the  
13 parties' request on the basis of the Court's finding that the ends of justice served by taking  
14 such action outweigh the best interest of the public and the defendant in a speedy trial.

15 IT IS SO STIPULATED.

16 Dated: August 22, 2022

PHILLIP A. TALBERT  
United States Attorney

17  
18 By: /s/ Brian W. Enos  
Brian W. Enos  
Assistant United States Attorney

20  
21 *(As authorized 8/22/22)*

22 Dated: August 22, 2022

By: /s/ Scott A. Tibbedeaux  
Scott A. Tibbedeaux, Esq.  
Attorney for Defendant  
Ricardo Guerrero

**ORDER**

IT IS ORDERED that the status hearing currently set for August 31, 2022, at 1:00 pm is continued until November 2, 2022, at 1:00 pm.

IT IS FURTHER ORDERED THAT the period of time from August 31, 2022 through November 2, 2022 is deemed excludable pursuant to 18 U.S.C. §§ 3161(h)(7)(A) and 3161(h)(7)(B)(i) and (iv) because it results from a continuance granted by the Court at the parties' request on the basis of the Court's finding that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial.

Dated: 8/23/2022

Sheila K. Oberto  
Honorable Sheila K. Oberto  
United States Magistrate Judge